STATE OF MICHIGAN

COURT OF APPEALS

JAYANNE GILROY, Trustee for the JAYANNE REID GILROY TRUST,

Plaintiff/Counter Defendant/Appellant-Cross-Appellee,

v

SCOTT SPEIDEL,

Defendant/Counter Plaintiff-Appellee-Cross-Appellant,

and

RAEANN CONONI,

Defendant-Counter Plaintiff.

UNPUBLISHED
May 21, 2013

No. 307125
Mackinac Circuit Court
LC No. 2010-006909-CH

Before: RONAYNE KRAUSE, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

This case concerns the scope of an easement that plaintiff Jayanne Reid Gilroy Trust (Gilroy) has over defendant Scott Speidel's property. Following a bench trial, the circuit court determined the physical boundaries of the easement and the uses that could occur within the easement. The parties both challenge the court's rulings.

The circuit court erred in finding that the easement extended to a static line on the plat map. The southern boundary of the property is the meander line of Lake Huron and the easement extends to the water's edge. The circuit court also failed to adequately instruct the parties regarding "the view" that must be "maintain[ed]" under the agreement and thereby left the parties without parameters for "restrict[ing]" Speidel's "construction and improvements" in the area. Moreover, the circuit court's grant of a "limited license" to allow Gilroy to continue her use of a preexisting driveway that crossed onto Speidel's land is not a proper fit to resolve the parties' dispute. We therefore vacate the court's opinions and orders and remand for further proceedings.

I. FACTS

A. BACKGROUND

Pamela B. Ganzhorn was previously the owner of four contiguous littoral lots in the "Bagnall Park" subdivision located in Clark Township. The lots border "Sheppard's Bay," which is part of Lake Huron. Ganzhorn had a house on Lots 19 and 20 and four rental cabins on Lots 21 and 22. At the northern end of the lots near the roadway, a garage straddled the property line dividing Lots 20 and 21. At the southern end of the lots near the lake, the terminus of a driveway used to access two of the cabins and a stairwell down a hill also crossed the Lot 20-21 property line.

On November 27, 1996, Ganzhorn sold Lots 21 and 22 to Gerald and Jayanne Gilroy and retained Lots 19 and 20. To address the incursions along the Lot 21-22 border, Gilroy and Ganzhorn executed and recorded a reciprocal easement agreement. Pursuant to the agreement, Ganzhorn retained the garage at the northern end of the properties. In relation to Gilroy's easement over Ganzhorn's land, the agreement provided:

> 1. Grant of Easement. . . . Gilroy and Ganzhorn each grant to each other, and their successors and assigns, a non-exclusive easement as follows:
>
> * * *
>
> b. Ganzhorn grants to Gilroy an easement on the East 24 feet of Lot 20, Bagnall Park, Clark Township, Mackinac County, Michigan, except the North 340 feet thereof. The purpose of this easement is to restrict construction or improvements on this property to maintain the view from the Gilroy property. Gilroy shall have the right to place and use and the obligation to maintain a walkway to the shore; the location and style of which is to be mutually agreeable by Gilroy and Ganzhorn. Evidence of acceptability to Grantor to be in writing prior to installation.

Ganzhorn marked off the southern easement with a retaining wall, a fence and a row of pine trees.

In the following years, Ganzhorn sold the property to Speidel's parents and upon their deaths Lots 19 and 20 were inherited by Speidel.[1] The Gilroys created a trust with Jayanne acting as trustee. The neighbors lived peacefully until the summer of 2010. According to the complaint, Speidel then constructed a dock within the easement, removed the fence, redesigned the landscape in "the easement area," and attempted to block Gilroy's access to the lake in preparation to sell his property.

[1] Speidel's sister actually inherited a half share but Speidel purchased her interest.

B. LITIGATION

On July 2, 2010, Gilroy filed suit, seeking a declaration of the parties' rights, enforcement of the easement agreement, and to enjoin and restrain Speidel from taking any actions contrary to the agreement. Speidel filed a counter-complaint, asserting that Gilroy trespassed on his property by using the easement for improper purposes, such as "[v]ehicular travel," [t]ransporting boats to the water," and "[i]nstalling improvements on the easement area." Both parties asked the court to interpret and enforce the easement agreement.

On October 29, 2010, Speidel moved for summary disposition, asserting that the easement agreement was unambiguous and should be enforced according to its plain language as a matter of law. At the motion hearing, the circuit court found that the easement language was "unambiguous," and the issue "boil[ed] . . . down to" the "interpretation of the specific words." The court did not actually rule on the motion. Instead, the judge indicated his intent to visit the property. After this visit, the court scheduled a bench trial, but called it "an evidentiary hearing," because it deemed "everybody does deserve a chance to be heard." The court instructed the parties that the "view" aspect of the easement had to be interpreted and the scope of the permissible construction had to be decided.

At trial, Gilroy and her husband testified about the creation of the easement with Ganzhorn and Speidel's later attempts to interfere with their usage. Gilroy also presented the testimony of a well-respected real estate attorney that the easement rights extended to the water's edge. Speidel presented the testimony of a surveyor that the parties' properties and the easement ended at a defined point before reaching the shore. Speidel conceded that Gilroy should be allowed to use the existing road to drive down the hill on the property and then cross into the easement to turn in front of the southern two cabins. Speidel wanted to restrict the width of Gilroy's road surface, however.

C. THE CIRCUIT COURT'S DECISION

On September 2, 2011, the circuit court entered a written order, finding that Lot 20 is a 400 by 55.78-foot lot, as defined in the Bagnall Park plat map. The court concluded that "the scope of [the] easement in question is constrained to that area reflected in the plat." In relation to the "view" aspect of the easement, the court found that "any construction or improvements on the easement area . . . would potentially impact the view of those two cabins lying to the north[.]" Moreover, "little, if any, significant construction would be permitted south of the existing lot line given the general nature and composition of the shoreline[.]" The court noted that there was a "walkway . . . already in existence on the property line" at the time the parties created the easement, and that "an extension of the same would be logical and . . . contemplated by the language." The court therefore ordered that "a walkway mutually agreeable in scope and location for Plaintiff's benefit be provided if desired." Noting that "a major point of contention appears to be that of the driveway leading down to [Gilroy's] property and the associated turnaround," and that Speidel "has not suggested elimination of this privilege," the court used its "equitable powers" to order that Gilroy "enjoy the current driveway scope, without expansion or

improvements (general maintenance allowed) or interference by [Speidel], understanding that said driveway area falls outside the easement area[2] and is the legitimate domain of [Speidel]."

Gilroy filed a motion for reconsideration, which the circuit court denied, and Speidel filed a motion for clarification, which the court granted. The court clarified that Gilroy had a "hybrid license" to maintain, but not expand, the driveway area for use by Gilroy's "vehicle, a pickup truck or vehicle of like size." In the event of future disagreement, the court also gave Speidel "the unfettered right to define said scope and use consistent with this Court's ruling."

II. STANDARD OF REVIEW

"The extent of a party's rights under an easement is a question of fact, and a trial court's determination of those facts is reviewed for clear error." *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005); see also *Tomecek v Bavas*, 482 Mich 484, 490; 759 NW2d 178 (2008). We review de novo the circuit court's equitable rulings. *Blackhawk Dev Corp*, 473 Mich at 40. The circuit court's interpretation of the easement agreement is also a question of law that we review de novo. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003); *Dyball v Lennox*, 260 Mich App 698, 703-704; 680 NW2d 522 (2003). "The task of determining the parties' intent and interpreting the limiting language is strictly confined to the 'four corners' of the instrument granting the easement." *Blackhawk Dev Corp*, 473 Mich at 42. We may consider extrinsic evidence of the parties' intents only if the document is ambiguous. *Id.*

III. ANALYSIS

A. THE EASEMENT EXTENDS TO THE WATER'S EDGE

First and foremost we hold that the circuit court erroneously determined that the easement ends at a static line shown on a map rather than at the water's edge. "Land which includes or is bounded by a natural watercourse is defined as riparian," or littoral when the land abuts a lake. *Thies v Howland*, 424 Mich 282, 288 and n 2; 380 NW2d 463 (1985). "When a plat shows a lot is bounded by the meander line of a lake, the grant of land is to the water's edge." *Mumaugh v McCarly*, 219 Mich App 641, 649; 558 NW2d 433 (1996), citing *Gregory v LaFaive*, 172 Mich App 354, 361; 431 NW2d 511 (1988). A "meander line" is a "border-line" of a body of water and "defin[es] the sinuosities of the banks." *Railroad Co v Shurmeir*, 74 US 272, 286-287; 19 L Ed 74 (1869).

The circuit court was led astray because the Bagnall Park plat does not include the term "meander line" as the southern boundary of the lots within. Instead, the plat includes an irregular "line" along Sheppard's Bay and the subdivision's southern edge, which is described by latitudinal and longitudinal coordinates. There is, however, no use indicated between the platted lots and the water's edge. Moreover, the irregular shape of the border follows Lake Huron's

[2] The driveway from Gilroy's property actually crosses onto Speidel's property within the physical boundaries of the easement but appears to be outside the easement's scope of use.

natural meander line. Accordingly, the property owners in the Bagnall Park subdivision are at least waterfront owners with littoral rights to the water's edge.

The easement agreement grants Gilroy an easement over "the East 24 feet of Lot 20" belonging to Speidel "except for the North 340 feet thereof." The parties to the agreement did not include a southern boundary for the easement, suggesting that the easement rights continued as far south as the property rights. And the use of the phrase "except for the North 340 feet thereof" evidences the parties' inability to define a certain southern border because of the shifting nature of the water's edge.

B. USES ALLOWED IN THE EASEMENT AREA

Gilroy complains because the circuit court limited her family's use of the easement area to maintaining a walkway leading down to the shore. She contends that the court's order improperly eliminates her right to use the beach she has maintained on the easement since her 1996 purchase of her property.

The plain language of the easement agreement provides simply that "Gilroy shall have the right to place and use and the obligation to maintain a walkway to the shore; the location and style of which is to be mutually agreed by Gilroy and Ganzhorn." It is possible that the inclusion of a beach area within the easement may have been mutually agreed upon by Gilroy and Ganzhorn at the time of its installation. However, the easement agreement provides that "[e]vidence of acceptability to Grantor to be in writing prior to installation." Gilroy provided no evidence of a writing in which Ganzhorn or his successors approved of the creation of a beach area within the easement. Accordingly, the circuit court properly concluded that Gilroy has no specific right to that use.

Gilroy complains that the circuit court improperly limited her right to place and use a walkway that is only three-feet in width as the easement is for 24 feet. While the court intimated during a hearing that a three-foot path should suffice as a walkway, the court never reduced that thought to an order. Nothing in the original order following the bench trial or the order after Speidel's motion for clarification limits the width of the actual walkway. Pursuant to the plain language of the easement agreement and given the absence of contrary language in the court's orders, Gilroy is entitled to construct a walkway of any width within the easement area so long as Speidel or any successor-in-interest agrees upon its "location and style."

C. "VIEW" ASPECT OF THE EASEMENT

The parties disagree regarding the proper interpretation of the following passage in the easement agreement: "The purpose of this easement is to restrict construction or improvements on this property to maintain the view from the Gilroy property." Gilroy asserts based on this language that the circuit court improperly approved Speidel's unilateral decision to remove the fence, trees and seawall that had previously marked the outer boundary of the easement area. These improvements were on the border of and outside the easement area. Since the circuit court's ruling, Speidel has removed all existing features of the shoreline and replaced it with a wide sand beach. This "construction," complains Gilroy also impermissibly "wholly modified" the view provided by the easement.

We first note that the easement agreement in no way limits Speidel's activities outside the easement area. The seawall, trees, and fence that Speidel removed were either outside the easement or directly on the perimeter. Accordingly, Gilroy has no authority to prevent Speidel's actions.

Moreover, the easement "restrict[s]" "construction or improvements"; it does not forbid these actions. "Restrict" means "to keep within limits; . . . to restrain within bounds." *Webster's New Universal Unabridged Dictionary* (Deluxe 2d ed), p 1544; see also Black's Law Dictionary (6th ed), p 1315. Speidel's ability to engage in construction or to make improvements within the easement area is limited or restrained "to maintain the view from the Gilroy property." "Maintain" is defined in part as "to keep or keep up; to continue in or with; to carry on" and "to keep in existence or continuance; . . . to preserve." *Webster's New Universal Unabridged Dictionary*, p 1087; see also Black's Law Dictionary, p 953. Speidel is thereby required to limit his construction and improvements in the 24-foot-wide easement up to the water's edge to keep, continue, and preserve the "view" from the Gilroy property.

The circuit court did not determine what the cited "view" entails, however. If the "view" is of the lake, Speidel's removal of trees only improves that view. If the "view" pertained to the general vista, including the appearance of the land, Speidel's sweeping changes surely would not comply with the parties' agreement. We cannot ascertain the parties' intention from the record and therefore remand for the circuit court's consideration. The circuit court should define the "view" contemplated in the agreement and establish parameters for the parties' rights and duties in this regard.

We reject, however, Gilroy's contention that any construction or improvement made by Speidel within the easement must be "mutually agreeable." The mutuality provision of the easement agreement applies only to "the location and style" of the walkway to be placed by Gilroy, not any work taken by Speidel.

D. DRIVEWAY

Both parties complain on appeal that the circuit court erred in granting Gilroy a "limited license" to continue the driveway use across the easement. Speidel asserts that no such relief should have been given because Gilroy did not raise this claim in her complaint and because a license was an improper method of relief in any event. Gilroy complains that the limited license provides inadequate protection to her interests. The circuit court specifically ruled:

> That [Gilroy] enjoy the current driveway scope, without expansion or improvements (general maintenance allowed) or interference by [Speidel], understanding that said driveway area falls outside the easement area and is the legitimate domain of the [Speidel].

The court based this decision on its equitable authority, "and in deference to [Gilroy's] necessity." The stated "necessity" was "the difficulty associated with accessing the lower two cabins."

First, we reject Speidel's claim that the circuit court should not have considered the driveway use. Speidel conceded at trial that Gilroy required use of the driveway to reach the two

southern cabins and that he purposefully protected Gilroy's ability to maneuver a large personal vehicle through the area when attempting to limit Gilroy's use of the easement. Speidel swore under oath that he did not intend to interfere with Gilroy's use of the driveway on the easement and the court merely protected Gilroy consistent with that averment.

The classification of the relief granted by the circuit court is troublesome. "A license grants permission to be on the land of the licensor without granting any permanent interest in the realty," and is "revocable at will." *Forge v Smith*, 458 Mich 198, 210; 580 NW2d 876 (1998). The court surely did not intend to give Speidel the right to arbitrarily discontinue Gilroy's driveway use.

There are issues with resolving this matter in other ways as well. A driveway for vehicular use is not contemplated in the easement agreement. As a general rule, the court was not permitted to consider extrinsic evidence as it found the contractual language to be unambiguous. *Blackhawk Dev Corp*, 473 Mich at 42; *Little*, 468 Mich at 700. A party may establish a prescriptive easement when use "is made pursuant to the terms of an intended but imperfectly created servitude." *Mulcahy v Verhines*, 276 Mich App 693, 699-700; 742 NW2d 393 (2007), citing *Plymouth Canton Cmty Crier, Inc v Prose*, 242 Mich App 676, 684-687; 619 NW2d 725 (2000), and Restatement of Property, Servitudes, 3d, § 2.16, pp 221-222. Yet, the claimant's use must last for 15 years to establish such a prescriptive easement, *Mulcahy*, 276 Mich App at 699, citing MCL 600.5801, and Gilroy's use of the easement was interrupted by Ganzhorn after only 14 years.

It is more likely that the circuit court attempted to find an easement by implication, also known as an implied easement. An implied easement exists when properties are initially owned by a common party who establishes means of access to one lot that traverse the boundary line with another lot. If the access route and its use are "visible" and "reasonably necessary to the enjoyment of the dominant" estate, an easement is implied after the original owner divides the property and transfers the lots. See *Rannels v Marx*, 357 Mich 453; 98 NW2d 583 (1959). When Ganzhorn owned all four lots he constructed the two lakefront cabins on Lots 21 and 22. These cabins are difficult to access because there is a steep hill from the roadside to the lakefront. Ganzhorn installed the driveway that travels down the hill on Lots 21 and 22 and loops onto Lot 20 before turning back onto Lot 21 in front of the cabins. The actual use and necessity of the use of that road was visible when Ganzhorn divided the property and sold Lots 21 and 22 to Gilroy. We now remand to the circuit court to clarify its order in this regard and impose an implied easement if it deems this remedy appropriate.

We vacate the trial court's decision and remand for further proceedings consistent with this Court's opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra